

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TERRY SHIBATA d.b.a.)
TERRY'S THRIFTWAY #434,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 66

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged violation of three sections of Regulation I of the Puget Sound Air Pollution Control Agency, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer), in the hearing room in the Seattle offices of respondent, 410 West Harrison Street, at 9:30 a.m., January 14, 1972.

Appellant appeared and represented himself. Respondent was represented by its chief counsel, Keith McGoffin. Richard A. Rogers

1 court reporter, recorded the proceedings.

2 The hearing began as an informal conference, but when it appeared
3 no compromise could be reached, it assumed the status of a formal
4 hearing. Witnesses were sworn and testified.

5 From the evidence submitted the Pollution Control Hearings Board
6 makes these

7 FINDINGS OF FACT

8 I.

9 During the morning of September 20, 1971, an incinerator owned by
10 appellant in Everett was used, apparently by an unnamed salesman doing
11 business with appellant, to burn material from a display which had
12 been used in appellant's supermarket.

13 II.

14 The incinerator was of a type not approved for burning under
15 Regulation I of respondent Agency. Visual particulant emissions were
16 in excess of standards established by Regulation I. Notice of
17 Violation of Sections 9.03(a)(1), 9.04 and 9.05 of Regulation I and
18 Notice of Civil Penalty No. 166, in the amount of \$50 were served on
19 appellant by respondent.

20 III.

21 The maximum civil penalty which respondent may impose for a
22 violation of Regulation I, is \$250.

23 IV.

24 Previous to September 20, 1971, over a period of almost 11 months,
25 respondent served appellant with three Notices of Violation (for
26 incidents occurring on October 29, 1970, February 22 and August 9,
27 1971) in connection with the same incinerator. In none of those three

1 Notices of Violation prior to September 20, 1971, however, did
2 respondent impose a civil penalty.

3 V.

4 Appellant agreed, in the early part of 1971, to cease operation
5 of the incinerator and to substitute a haul-away system for disposal
6 of waste material.

7 VI.

8 Appellant was frustrated in his efforts to establish a haul-away
9 system through a series of unfortunate delays.

10 From these facts, the Pollution Control Hearings Board comes to
11 these

12 CONCLUSIONS

13 I.

14 Appellant appears to be a busy merchant sincerely desirous of
15 complying with air pollution regulations. His agreement with
16 respondent not to use the incinerator was voided on at least two
17 instances, by his employees or salesmen with whom he was doing
18 business. However, appellant must recognize that he, as owner of the
19 incinerator, is responsible for its use by his employees and business
20 associates.

21 II.

22 Respondent appears to have been most patient in attempting to
23 achieve appellant's compliance. Three previous Notices of Violation
24 were not accompanied by civil penalties. In the matter under appeal,
25 the invoked penalty is one-fifth of the maximum allowable amount.

26 III.

27 It is unfortunate that appellant experienced delays in his

FINDINGS OF FACT,

1 provision of a haul-away system, but appellant surely had other means
2 at his disposal for temporary hauling.

3 Therefore, the Pollution Control Hearings Board issues this

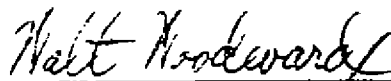
4 ORDER

5 Respondent's Notice of Violation for September 20, 1971, and
6 Civil Penalty Notice No. 166 in the amount of \$50 are sustained.

7 DONE at Olympia, Washington this 4th day of April, 1972.

8 POLLUTION CONTROL HEARINGS BOARD

9 
10 MATTHEW W. HILL, Chairman

11 
12 WALT WOODWARD, Member

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14 JAMES T. SHEEHY, Member

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25 FINDINGS OF FACT,
26 CONCLUSIONS AND ORDER